

Appl. No. 09/883,554
Rule 312 Amdt. Dated 10/11/2005

REMARKS

On July 28, 2005, the United States Patent and Trademark Office (USPTO) issued a Notice of Allowance for the subject application. Pending claims 8-18 and 20-25 have been allowed. This Rule 312 Amendment is being filed concurrently with an Information Disclosure Statement. A Notice of Allowance and Fee(s) Due accompanied by a check for payment of the issue fee will be submitted on October 12, 2005. None of the allowed claims have been amended.

In an effort to circumvent third-party IDS submission rules (*see 37 C.F.R. §1.99*), counsel for a third-party has provided the undersigned attorney with a copy of U.S. Patent No. 6,456,649 and a statement prepared by third-party counsel concerning the relevance of the '649 Patent (*see IDS*). Moreover, the third-party counsel has threatened us with the notion, albeit a preposterous one, that the lack of submission of this statement would be evidence of our intent to deceive the USPTO. We consider this to be a preposterous notion because the statement is not prior art, but rather, it is the argument of a biased third-party. Also, the statement is directed to subject matter located in columns 24-25 of the '649 Patent, which is cumulative of and substantially identical to the subject matter found in columns 23-24 of U.S. Patent No. 6,493,395. As the Examiner is aware, U.S. Patent No. 6,493,395 has already been carefully considered and is listed on the PTO-892 form attached to the Office Action dated February 10, 2005.

However, to ensure that the undersigned attorney has fully satisfied his duty of disclosure and has even exceeded the limits of this duty, we are supplying the statement in full without any amendment or redaction on our part. We believe that the Examiner will agree that the arguments made in this statement do not alter the allowability of the claims, and as a result, will issue a Supplemental Notice of Allowance and allow the patent application to proceed to issue since the issue fee has already been paid.

We apologize for the late submission. We received this information on September 28, 2005. Besides the subject matter of the '649 Patent being cumulative to U.S. Patent No. 6,493,395 of record, so the '649 Patent could be interpreted to be a non-material prior art reference, the third-party counsel failed to direct their correspondence to the undersigned attorney having a duty of disclosure under 37 C.F.R. §1.56(c), even though they had this contact information as far back as September 2004. Rather, at that time, the third-party counsel submitted the information to General Counsel for the assignee who, based on the facts uncovered, is a person not substantively involved in the preparation or prosecution of the application. Once the third-party counsel submitted the information to the undersigned attorney, a person who is substantially involved in the preparation or prosecution of the subject application, we have promptly attended to the submission of the prior art and request consideration of the same.

Thank you in advance for your time and attention to this matter.

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Conclusion

At your earliest opportunity, Applicants respectfully request the Examiner to consider this submission and issue a timely Supplemental Notice of Allowance to allow the subject application to proceed to issue.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 10/11/2005

By

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Date: 10/11/2005

Jessica A. Clark

10/11/2005

Date